

December 3, 2012

MEMORANDUM TO: Michael F. Weber  
Deputy Executive Director for Materials, Waste,  
Research, State, Tribal, and Compliance Programs  
Office of the Executive Director for Operations

Bradley W. Jones, Assistant General Counsel  
for Reactor and Materials Rulemaking  
Office of the General Counsel

Mark A. Satorius, Director  
Office of Federal and State Materials  
and Environmental Management Programs

William M. Dean, Administrator  
Region I

FROM: Michelle R. Beardsley, Health Physicist */RA K. Meyer for/*  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

SUBJECT: DECEMBER 10, 2012 SPECIAL MRB MEETING

A Special Management Review Board (MRB) meeting, to discuss the results of the periodic meetings held with the Arkansas, Kansas and Oklahoma Agreement State Programs, has been scheduled for **Monday, December 10, 2012 from 2:00 p.m. to 5:00 p.m. ET, in One White Flint North, Room 17-B4**. The summaries for each of the meetings are enclosed (Enclosures 1, 2 and 3).

In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for this meeting is enclosed (Enclosure 4).

If you have any questions or need additional information, please feel free to contact me at (610) 337-6942 or [Michelle.Beardsley@nrc.gov](mailto:Michelle.Beardsley@nrc.gov).

Enclosures:  
As stated

cc w/ encl.: Jennifer Opila, CO  
Organization of Agreement States  
Liaison to the MRB

MRB Members

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<b>OFFICE</b>	MSSA/ASPB	
<b>NAME</b>	MBeardsley / knm1	
<b>DATE</b>	12/03/12	

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE  
ARKANSAS DEPARTMENT OF HEALTH

DATE OF MEETING: OCTOBER 30, 2012

<b>NRC Attendees</b>	<b>Arkansas Attendees</b>
Randy Erickson, RSAO	Bernard Bevill, Section Chief
Vivian Campbell, Deputy Division Director	Jared Thompson, Program Manager
	Steve Mack, Health Physicist
	Layne Pemberton, Health Physicist
	Tammy Kriesel, Health Physicist
	Kayla Avery, Health Physicist
	Angie Hill, Health Physicist

**DISCUSSION:**

The Arkansas Agreement State Program is administered by the Radioactive Materials Program (the Program). The Program is one of three programs in the Radiation Control Section (the Section), which is part of the Health Systems Licensing and Regulation Branch (the Branch). The Branch is part of the Center for Health Protection within the Arkansas Department of Health (the Department).

The previous follow-up IMPEP review (ML111780695) and accompanying Periodic Meeting was conducted the week of April 5-8, 2011. At the conclusion of the review, the team found Arkansas' performance to be satisfactory for the indicators Technical Staffing and Training and Status of Materials Inspection Program; and satisfactory, but needs improvement, for the indicator Technical Quality of Licensing Actions.

The review team recommended that the Arkansas Agreement State Program be found adequate to protect public health and safety, but needs improvement, and compatible with NRC's program; and, that the period of Heightened Oversight of the Arkansas Agreement State Program be discontinued, and that a period of Monitoring be initiated. The MRB agreed with the team's recommendations.

The review team closed three of four recommendations regarding program performance by the State and kept open one recommendation from the previous review. That recommendation was modified during the 2011 IMPEP review to more accurately describe the actions necessary to meet the intention of the review team.

The current status of the one remaining recommendation identified during the 2011 Arkansas final IMPEP report is summarized below.

- The review team recommends that the State develop and implement a method for tracking the status of license action reviews to ensure timely completion.

Current Status: The Program has developed a method for tracking the status of licensing actions and is working to complete those actions in a timely manner. All new licensing actions are assigned by management and must begin within 45 days. Managers track each licensing action and perform follow up to ensure that all are completed within designated timeliness goals.

At the time of the 2011 IMPEP review, the Program had set a goal of completing 40 backlogged license renewals by the time of the 2012 Periodic Meeting. They have exceeded their goal and completed 50 of the backlogged renewals. During this time, each staff member was required to have four backlogged renewals working at any given time in addition to also processing new renewals that have come due, processing new license amendments, performing inspections, responding to incidents and allegations, and participating in emergency response duties. Program managers noted that the program is working well and the staff has responded admirably.

While the backlog of license renewals can be attributed primarily to the Program's previous inability to retain staff, at the present time with greater staff stability the Program has overcome the majority of the issues plaguing the Program noted during the 2007 Periodic Meeting. Following the 2007 Periodic Meeting the Program was placed on Heightened Oversight.

In 2007 the Program had 245 licensees, of which 92 were under timely renewal. Of those 92 backlogged renewals, 91 percent had been under timely renewal for more than one year. Fifty five of the 92 backlogged licenses had been under timely renewal since the 2002 IMPEP review, five years earlier.

Presently the Program has 208 licensees. At the time of the meeting, the Program only had a total of 33 of the backlogged renewals originally identified in 2007 left to complete. Of the remaining 33 renewals in backlog, 24 are currently being worked by staff. And only nine of the original 92 backlogged licenses are yet to be started. It should be noted that during that same time period, approximately 100 new renewals had come due and had also been processed by the staff.

Other topics covered at the meeting included.

Program Strengths: The Arkansas Program is a busy program with a highly motivated staff that is responsible for the licensing and inspection of 208 specific materials licensees. Management support to the Program is outstanding at all levels, and access to senior management is unencumbered. The Program noted that the dedication of their staff to making the program successful is a huge strength for them.

While the Program has experienced several staff losses in recent years, mainly due to low salaries and the lack of a promotion pathway, they have been successful in filling positions with talented individuals. Base salaries have increased; a program was put in place which allows staff who takes and passes advanced training courses to receive additional increases in salary, and the staff is now rotated through managing other Program activities such as reciprocity activities, the general license program, and the

NORM program. Staff noted that these shared experiences have resulted in a much greater knowledge base and better customer service to all Arkansas licensees.

Program Weaknesses: While the Program has experienced success in filling positions in the materials program, they acknowledge they are still in the building process. While the Program Manager and the most senior staff member have over 20 years of experience each, the rest of the staff is relatively new, ranging from 2-6 years of experience. The lack of a career ladder still exists and is unlikely to be changed. There have also been department wide restrictions on hours worked that have made it difficult for some of the staff. The Program noted that their licensing guidance needs updating, and they are still building the general license program. They also feel they are behind the curve in regards to Web Based Licensing which is something they are anxious to complete.

#### Feedback on NRC's Program:

The Program discussed several issues affecting the Program including the following:

- The Program expressed their appreciation for allowing the States so much integration into NRC working groups. Participating in these activities has helped grow the staff's knowledge base.
- The Program expressed their appreciation for the support they receive in the form of training from NRC. They further stated that they are having difficulty getting into certain training courses such as the Brachytherapy course.
- The Program stated that for them, NSTS, especially the help desk, continues to be cumbersome. The Program stated that the help desk is ineffective and slow.
- The Program believes they are behind the curve when it comes to Web Based Licensing (WBL) / Licensing Tracking System (LTS). They would like to incorporate it into their program and need assistance.

#### Staffing and training:

The Arkansas Program is a busy program which is divided into different program areas. Four out of five inspectors have been with the Program less than six years, but most are fully qualified. Only the newest staff member is not yet fully qualified. At the time of the meeting, the Program reported they were fully staffed. The Program reported that most of their staff has completed NRC's core training courses.

The status of Agreement State staff members who fail NRC training courses was discussed. Program managers indicated it is their policy to either resend the individual to the class or provide other forms of training whenever this might occur. Since the last IMPEP review, no staff members have failed to pass a course they attended.

Program reorganizations:

The Program has not been subject to reorganization since the 2011 IMPEP review.

Changes in Program budget/funding:

At the time of the 2011 IMPEP review, the Program had not had a fee increase in 16 years. They had requested fee increases over the years, but were not successful. Recently, the legislature has been even more reluctant to raise fees because of the economic situation the State is currently experiencing. To improve the possibility of achieving a fee increase, a bill sponsor suggested that the Department introduce a bill to move the responsibility for fee increases from the legislature to the Board of Health. That bill was introduced and passed. Recently the Board of Health approved a fee increase from levels put in place 16 years ago to 15 percent of NRC's 2011 fees. This fee increase goes into effect in November 2012. The Program also agreed not to request another fee increase until 2019. Currently, the Program appears to be well positioned financially and believes this funding will support their Program sufficiently for the next several years.

Materials Inspection Program:

The Program reported that they currently have no overdue inspections. Initial inspections are typically performed within 12 months of issuance. They continue to inspect reciprocity licensees and have not had difficulty performing inspections on at least 20 percent of candidate reciprocity licensees. The Program performs Increased Controls (IC) inspections concurrent with health and safety inspections. All new IC licensees are inspected before the licenses issued. Supervisory accompaniments are being conducted annually by the Program Manager.

Licensing Program:

The Program reported that the licensing program is very active. As noted earlier, the licensing renewal backlog is down from an initial backlog of 92 renewals to only nine left to start. New renewals are being worked concurrently with backlogged renewals and amendments are being processed as they come in. The Program Manager tracks all licensing actions and staff is responsible for ensuring they are completed timely.

The Program also has a General License Program (GL) they are currently working to strengthen. They do not perform inspections of GL devices currently, but have that as a goal for the future. The Program reported they use current pre-licensing guidance and conduct pre-licensing visits for all new licenses issued.

Regulations and Legislative changes:

The Program reported that no legislation affecting the Program has been introduced or passed since the 2011 follow-up IMPEP review.

Current NRC policy requires that Agreement States adopt certain equivalent regulations or legally-binding requirements no later than 3 years after they become effective. At the time

of the review, there were no overdue regulations.

The review team identified the following regulation changes and adoptions that will be needed in the future, and the State related that the regulations would be addressed in upcoming rulemaking or by adopting alternate legally binding requirements:

- “Decommissioning Planning,” 10 CFR Parts 20, 30, 40, and 70 amendments (76 FR 35512), that is due for Agreement State implementation by December 17, 2015.
- “Licenses, Certifications, and Approvals for Materials Licensees,” 10 CFR Parts 30, 36, 39, 40, 70, and 150 amendments (76 FR 56591), that is due for Agreement State implementation by November 14, 2014.
- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” 10 CFR Part 71 amendment (77 FR 34194), that is due for Agreement State implementation by August 10, 2015.
- “Technical Corrections,” 10 CFR Parts 30, 34, 40, and 70 amendments (77 FR 39899), that is due for Agreement State implementation by August 6, 2015.
- “Requirements for Distribution of Byproduct Material,” 10 CFR Parts 30, 31, 32, 40, and 70 amendments (77 FR 43666), that is due for Agreement State implementation by October 23, 2015.

#### Event reporting, including follow-up and closure information in NMED.

Since the 2011 IMPEP review, the Program had reported eight events to NMED, with 3 remaining open. The Program will close the open events when they are able to obtain the necessary information.

#### Response to incidents and allegations.

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their affect on public health and safety. Incidents are evaluated for safety significance and staff is dispatched to perform onsite investigations whenever possible.

#### Status of allegations and concerns referred by the NRC for action.

The Program continues to process allegations as they are received. In addition to two allegations received directly by the Program since the 2011 IMPEP review, NRC also referred two allegations to the Program. Each of the allegations received by the Program have been investigated and closed. The Program continues to be sensitive to issues of identity protection regarding allegers.

#### Significant events and generic implications.

The Program reported they have not experienced any significant events with potential generic implications since the 2011 IMPEP review.

#### Current State Initiatives.

The Program reported that current initiatives they are involved with include:

- Decommissioning activities with the former DOE Sefor Fast Oxide Reactor site.
- Decommissioning activities at two NORM sites involving multiple site visits.

#### Emerging Technologies.

The Program reported no new activities involving emerging technologies since the 2011 IMPEP review.

#### Large, complicated, or unusual authorizations for use of radioactive materials.

The Program reported the following as examples of large and complicated authorizations:

- Decommissioning activities with the former DOE Sefor Fast Oxide Reactor site.
- Decommissioning activities of an Arkansas licensee who disposed of 62 cesium-137 sources contained in older gauges in storage.

#### State's mechanisms to evaluate performance.

The Program reported the following as examples of how they evaluate program performance:

- Management requested that the Program continue internally using the Program Improvement Program initially used during the period of Heightened Oversight. This is used as a tool to internally monitor continued progress and is evaluated quarterly.
- Inspector accompaniments are performed to ensure they are performing at the expected level.

#### Current NRC initiatives:

Various NRC initiatives were discussed including senior NRC management changes, web based licensing program, and General License Program updates.

#### Summary:

The Arkansas Program has worked diligently to recover from a long history of low salaries, the inability to retain staff, the lack of a career ladder, and the staff's general distrust for management. Arkansas management viewed these as serious issues and responded in a serious manner, making substantive changes. Salaries were raised, an avenue for staff to take advanced classes to obtain additional salary increases was also created, and managers began meeting with the staff on a routine basis to address personnel and work



related issues. These changes have resulted in better overall staff satisfaction and retention.

While Arkansas' managers and staff put a lot of effort into strengthening the Program, NRC also provided support through multiple training opportunities that included inspector accompaniments, training on reporting requirements, performance based inspection training, and issue specific licensing training. Accompaniments were performed by both regional and FSME staff; and, licensing staff from both Region IV and Region III traveled to Arkansas to provide training. Arkansas staff also traveled to the Region IV office for training.

The final recommendation involving the reduction and ultimate elimination of a previously large backlog of license renewals has been vastly improved since the time of the 2007 Periodic Meeting. Following the 2011 IMPEP review, the Program was removed from Heightened Oversight and a period of Monitoring was initiated. This was recommended primarily because the Program had previously not had sufficient time to demonstrate a period of sustained performance. Since that review, the Program has only grown stronger and the backlog has continued to be reduced. Staffing has been stabilized and the Program is much stronger for it today. For these reasons, it is recommended that the Management Review Board consider removing the Arkansas Radiation Control Program from Monitoring.

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held on schedule in October 2014.

KANSAS PERIODIC MEETING SUMMARY

Date of Meeting: June 27, 2012

NRC Attendees	KANSAS
Rachel Browder, RSAO	Tom Conley, <i>Section Chief</i> Radiation and Asbestos Control
Lisa Dimmick, FSME	David Whitfill, <i>Supervisor</i> Radiation Material Licensing and Inspection
Joan Olmstead, FSME	Isabelle Busenitz, <i>Regulatory Affairs &amp; Training Coordinator</i> Radiation and Training Programs
Art Howell, DRA, Region IV	James Harris, <i>Environmental Scientist</i> Radiation Control Program
	Judee Walden, <i>Environmental Scientist</i> Radiation Control Program
	David Lawrenz, <i>Environmental Scientist</i> Radiation Control Program

DISCUSSION:

The Kansas Agreement State Program is administered by the Radiation and Asbestos Control Section (the Section) within the Department of Health and Environment's Bureau of Environmental Health. The Section oversees six programs, in which two of the programs directly support the Agreement. These are the Radioactive Materials Licensing and Inspection program and the Regulations and Training program. The Section regulates approximately 300 specific licenses authorizing byproduct, source, and certain special nuclear materials (radioactive materials), 470 general licenses, and 60 to 70 reciprocal licenses.

The last Integrated Materials Performance Evaluation Program (IMPEP) review was conducted on June 14-18, 2010. Based on the IMPEP review and the presentations made during the Management Review Board (MRB) meeting on September 23, 2010, the MRB found the Section satisfactory in all six performance indicators. The MRB found the Kansas Agreement State Program adequate to protect public health and safety and compatible with the U.S. Nuclear Regulatory Commission's (NRC) program. The review team recommended, and the MRB agreed, that two recommendations be made for evaluation and implementation, as appropriate, by the State. Based on the results of the 2010 IMPEP review, the review team recommended, and the MRB agreed, that the next full IMPEP review take place in approximately 4 years with a periodic meeting tentatively scheduled for June 2012. The purpose of this periodic meeting is to fulfill the requirement in order to evaluate the overall implementation of the Agreement State Program.

Following is a status of the actions taken by the Section to address each recommendation. These actions should be reviewed during the next IMPEP in order to close the respective recommendation.

1. The review team recommends that the State ensure that inspectors gain increased

familiarity with the regulations in 10 CFR Part 35, as well as be provided appropriate formal training in addition to mentoring and/or on-the-job training to ensure familiarity with various therapeutic modalities involving byproduct materials such that these areas will be appropriately reviewed during inspections. (Section 3.1, *Technical Staffing and Training*)

Status: Since the 2010 IMPEP Review, one inspector attended the H-313, "Brachytherapy, Gamma Knife, and Emerging Technologies," training course in August 2010. Four other staff members requested the training in 2011, and three staff members requested the training in 2012. All of the requests were denied through the NRC scheduling process. There were several reasons that contributed to the denial of these training requests. The NRC training coordinator was not made aware of the specific recommendations to the program. This notification should have been made; otherwise, there is no indication of a specific need by the program since it was found adequate to protect public health and safety and compatible with NRC's program. In addition, there are a significant number of requests for this particular training course since it is a required course for qualification in the medical area. Due to the number of denials for this particular training course, the frequency of providing the course has increased to three times a year and possibly four times a year. The NRC training coordinator for the Agreement State programs has indicated that the Kansas requests will be approved for the next calendar year.

As a result of these denials, the Section contacted the University of Kansas (UK) Hospital Authority and is in the process of coordinating a course equivalent to H-313. The Section indicated that they will proceed on this dual pathway, submitting additional requests for the H-313 course and will continue its discussions with the UK Hospital Authority.

As a means to further enhance the inspections performed at therapeutic hospital facilities, the Section typically uses a team of at least two inspectors for more complex licensees.

2. The review team recommends that the State further develop the policy that was instituted during the onsite review and provide additional guidance for identifying, marking, handling, transmitting, and storing documents containing sensitive information. (Section 3.3, *Technical Quality of Inspections*)

Status: The Section developed its policy for controlling potentially sensitive license files into program Procedure RCP-22, "Control of Potentially Sensitive License Files." The procedure was reviewed and it appears that the Section adequately controls and maintains license files which may contain sensitive information. In addition, the procedure addresses the Agency's policy on Kansas Open Records Act (KORA) requirements for release of information.

### Program Strengths

A strength of the Kansas Agreement State program is its staff members. The staff includes two Certified Health Physicists, three staff members who are registered technologists under the National Registry of Radiation Protection Technologists (NRRPT), and one individual with a

Master's in Nuclear Engineering. Combined, the staff members have over 100 years of experience in the health physics field, including the nuclear reactor program. The Section indicated that its ability to retain staff can be attributed to the program's willingness to provide enrichment opportunities and cross-training of staff to broaden and expand their expertise.

The Section has consistently improved over the past 10 years. The tools developed by the Section and staff include in-depth procedures, computer tracking, a risk analysis database, and a continuing questioning attitude to improve processes and mechanisms in the program. One such tool is a risk-based algorithm. The Section demonstrated the algorithm during the periodic meeting and explained how it is used to classify the severity level of violations. The tool takes into account the root causes and potential health effects of the violation. In this manner, the Section can consistently apply enforcement actions and civil penalties. The tool has also been integrated into the database for inspections to perform a risk-analysis of potential violations.

The Section provides a 2-day outreach conference to the regulated community, which provides licensees with an opportunity to meet the staff, obtain the latest information on regulatory changes, earn continuing education credits, and hear from experts in their fields. Conferences have been held for 2006, 2008, and 2011. The next conference is scheduled for 2013. The Section has also performed safety culture outreach to its licensees and developed a safety culture policy statement for the program.

#### Program Weaknesses

The Section expressed that, as with other states, it also struggles with the realities of the current economy and staffing issues, including attracting and retaining qualified staff. The program lost one inspector in September 2011. However, they were able to post the position and fill the vacancy by March 2012 from within the Section. The new staff member has experience in emergency preparedness and radon monitoring and is currently obtaining the necessary qualifications for the radiation control program.

#### Feedback on NRC's Program

The Section expressed that it is difficult to obtain the necessary training courses for staff qualification. In particular, the medical courses, H-304, "Nuclear Medicine" and H-313 "Brachytherapy, Gamma Knife, and Emerging Technologies." As already discussed, the NRC Technical Training Center (TTC) has increased the offerings of these two courses which should provide sufficient course offerings to accommodate all requests.

The Section suggested that alternatives for training courses should be considered by the NRC, including VTC, webinars, and hosting training courses in multiple locations. For example, the licensing procedures course could be provided by webinar at multiple locations with a host/instructor at each location to conduct the exercises and scenarios.

The Section has historically hosted training courses in Kansas, and would like to continue to host training courses in the future. However, the NRC has started moving away from having States host training courses because of the logistical coordination and lack of adequate facilities for the training course. The Section requested that the NRC reconsider this decision because of the benefits to the State, including a number of seats reserved for the host state in the course.

The Section expressed that it is disappointed in the recent legal interpretation of the Federal

Advisory Committee Act (FACA) in that the NRC will no longer continue its practice of having Conference of Radiation Control Program Directors (CRCPD) representation on NRC working groups. The Section indicated that this decision does not allow non-Agreement States to participate on working groups or have a venue to express themselves, except as a member of the public. As a result, the Section suggested that this decision impacts the good relationship between non-Agreement states and the NRC. The Section suggested that the NRC provide information and specific mechanisms that the non-Agreement States may utilize in order to participate in the process.

Kansas suggested that the NRC consider adding more specific information to the e-mail subject line to describe what is in the attachment when they send notices or FSME/RCPD letters to the Agreement States. In addition, if the NRC is requesting a response due date, then this should be clearly identified in the subject line and at the beginning of the respective document instead of at the end of the document.

The Section is also concerned with NRC's apparent path toward lowering the occupational dose limits. The Section believes that lowering the dose limits without a thorough consideration of the impacts on areas not regulated by NRC is detrimental to the regulatory process and will result in dual standards in order to maintain the current level of patient care. For example, there is a shortage of interventional radiologists who, due to the number and type of procedures they perform, would not be able to meet the lower dose limit even with utilizing weighting factors. This will, by necessity, result in a dual standard in order to avoid requiring these radiologists to cease treating patients when they reach the dose limit.

#### Staffing and Training

The Section is fully staffed with five staff members, one supervisor, and one manager. The Section indicated that they have adequate FTE to support the program. However, the Section's productivity is negatively impacted when there is turnover or other activities that take staff time away from the agreement program. The years of each staff member's experience in the program ranges from 1 to 12 years. In addition, the majority of staff have significant experience in health physics beyond the time spent in the program.

The Section cross-trains other staff members to support the Radiation Control Program, by sending them to the NRC-sponsored core training courses as appropriate. This effort should lessen any future impacts as a result of turnovers or retirements.

#### Program Reorganizations

There has not been a program reorganization since the IMPEP review.

#### Changes in Program Budget/Funding

The administration changed during the last election and the Section indicated that they continue to have good support from the Department. The Section has a solid source of funding through a dedicated fee fund. In addition, they are proposing an increase in fees to ensure they continue to operate solidly. The Section has not been affected by any furloughs or layoffs, although other programs have been impacted by layoffs.

#### Materials Inspection Program

Kansas' inspection frequencies are at least as frequent as found in NRC's Inspection Manual

Chapter (IMC) 2800 or more frequent based on the risk analysis tool implemented by the Section. The Section stated it had performed 247 inspections since July 1, 2010, and 25 inspections were performed overdue, or 10 percent overdue. However, the Section indicated that the overdue calculation was based on Kansas' inspection frequency; under the NRC inspection frequency, it would be significantly less. There was only one inspection overdue with respect to NRC priorities at the time of the periodic meeting. However, the Section had changed the particular license to possession-only, until the licensee took certain remedial actions to address the identified violations. At the time of the periodic meeting, the licensee was not authorized to fully operate under its license.

The Section performs accompaniments throughout the year for all the inspectors. There are a number of team inspections performed for higher-risk authorizations, which are accompanied by the Supervisor and/or Section Chief. The Section performs inspections of new licensees within 12 months of license issuance. Pre-licensing visits are performed for those new licensees that are unknown to the program in accordance with the Risk-Significant Radioactive Material (RSRM) checklist. The Section has continued to devote a significant amount of resources to perform inspections of licensees working under reciprocity during the review period. A recommendation from the 2006 IMPEP report, regarding the performance of reciprocity inspections, was closed during the 2010 IMPEP review. The Section has continued to perform reciprocity inspections in accordance with the frequencies identified in IMC 1220.

The Section posts information notices (IN) on its Radiation Control Program website. Examples of some of the notices include: NRC IN 2009-18, "Performance of Required Shutter Checks and Reporting of Gauge Shutter Failures," and IN 2009-30, "Findings from the NRC Initiative to Assess Materials Licensees' Compliance with the NRC Decommissioning Requirements."

#### Materials Licensing Program

Licensing actions are kept current with no license backlog. During the periodic review period, the Section completed 418 licensing actions. The licensing actions are generally completed within 45 days. All licensing actions are reviewed by the Program Supervisor and reviewed and signed by the Section Chief.

#### Regulations and Legislative Changes

The State is current on the submittal of regulatory amendments currently required for compatibility, and they have a process in place to address the comments which were identified in the final rule packages for (RATS ID 2007-2) and (RATS ID 2007-3). The state did have comments for (RATS ID 2001-1), which concerns generally licensed devices (GLDs). This regulation review has been held in abeyance as a result of the proposed rule on GLDs. However, as discussed during the periodic meeting and as documented in FSME letter 12-016, there was a change in compatibility of 10 CFR 31.5 and 31.6, as well as the withdrawal of the proposed rule and closure of Petition For Rulemaking: Organization of Agreement States and Florida Department of Health, Bureau of Radiation Control. The NRC will review (RATS ID 2001-1) and (RATS ID 2012-1) and self-initiate changes to Kansas' State Regulation Status (SRS) Data Sheet and close the review by letter. Therefore, the State will not be required to submit a package for (RATS ID 2012-1). The State indicated that they did not have any plans to modify this section of the regulations.

The following amendments will need to be addressed by the Radiation Control Program in

future rulemakings or by adopting alternate generic legally binding requirements:

- "Decommissioning Planning," 10 CFR Parts 20, 30, 40, and 70 amendment (76 FR 35512) that is due for Agreement State adoption by December 17, 2015
- "Licenses, Certifications, and Approvals for Materials Licensees," 10 CFR Parts 30, 36, 40, 70, and 150 (76 FR 56951) that is due for Agreement State adoption by November 14, 2014
- "Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste," 10 CFR Part 71 that is due for Agreement State adoption by August 10, 2015

#### Event Reporting, Including Follow-up and Closure Information in NMED

At the time of the periodic meeting, the Radiation Control Program had 26 events reported in the Nuclear Material Events Database (NMED), of which 13 were reported in accordance with SA-300. The events were appropriately reported to the NRC and were properly entered into, and updated, within NMED.

#### Response to Incidents and Allegations

The Radiation Control Program continues to be responsive to notifications of incidents and allegations. Incidents are quickly reviewed for any affect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Section Chief and Program Supervisor have placed a high emphasis on maintaining an effective response to incidents and allegations.

#### Status of Allegations and Concerns Referred by the NRC for Action

The NRC did not refer any allegations to Kansas since the last IMPEP review.

#### Emerging Technologies

The Radiation Control Program has authorized some broadscope licenses to use intravascular brachytherapy (IVB) and Y-90 microsphere modalities; however, there have not been any significant emerging technologies during this review period.

#### Large, Complicated, or Unusual Authorizations for use of Radioactive Materials

The Radiation Control Program initiated and approved an exemption for landfill waste material that was destined to an RCRA facility in Idaho. Kansas initiated this process based on an NRC letter dated December 16, 2004, which stated in part that Agreement States may conduct similar reviews [e.g., NRC exemption] and approvals following their compatible regulations. However, the RCRA facility in Idaho notified Kansas that they would be required to obtain an exemption from the NRC. This event and other similar events prompted FSME to issue FSME letter 12-025, dated March 13, 2012, "Clarification of the Authorization for Alternate Disposal of Material issued under 10 CFR 20.2002 and exemption provisions in 10 CFR." Due to the length of time NRC estimated to review the exemption for the RCRA facility, the Kansas licensee who had a large decommissioning project ongoing was forced to break its contract with the RCRA facility and dispose of its waste at a Utah facility whose original bid was significantly

higher. Kansas has expressed that the exemption process should be reevaluated so that, under the circumstances where the material meets the RCRA definition, the material should be authorized for the RCRA facility, without any further review. Otherwise, the regulations become burdensome and contribute to the waste disposal problems in the United States.

#### Current State Initiatives

The Section hosts a Radiation Control Program Conference every couple of years. There are approximately 150 to 200 attendees and licensees from across the state who attend the 2-day conference. The next conference is scheduled for 2013, and the Section is planning a presentation on Safety Culture during the conference.

Kansas has several staff members who participate on working groups, including the NUREG-1556 revisions and the Part 37 working group. The Section also supports the IMPEP program through participation on review teams and as the Organization of Agreement States (OAS) liaison to the MRB meetings.

Kansas participates in national meetings, including OAS and CRCPD. The Section expressed that participation on working groups attending meetings and conferences provides information and ideas for improving the processes in the program.

#### State's Mechanisms to Evaluate Performance

The Section uses management review of inspection reports and licensing actions to ensure the quality of regulatory products. Self-audits are performed and computer tracking mechanisms are utilized to ensure elements of the program are completed as required. In addition, the Section performs accompaniments to assess the quality of the inspections to ensure that licensed activities protect public health and safety and are performed in accordance with the regulations and license conditions.

#### Current NRC Initiatives

NRC staff discussed ongoing Office of Federal and State Materials and Environmental Management Programs (FSME) initiatives with the Kansas representatives. This included an update on the current FSME organization, review of the Safety Culture policy initiative, and status of the web-based licensing (WBL) program, as well as the NUREG-1556 revision status, policy statements, and a discussion of the recent FACA interpretation.

#### CONCLUSION

The Kansas Agreement State Program remains an active, strong, stable program with excellent management support. The Section has implemented processes, mechanisms, and tracking tools to successfully operate their program. The Section has management support and is positioned for a continued successful operating program.

#### Schedule for the Next IMPEP Review

NRC staff recommends that the next IMPEP review be held, as currently scheduled, in June 2014.



AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE  
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE OF MEETING: OCTOBER 24, 2012

<b>NRC Attendees</b>	<b>Oklahoma Attendees</b>
Randy Erickson, RSAO	Mike Broderick, Manager
Stephen Poy, FSME	

DISCUSSION:

The Oklahoma Agreement State Program is administered by the Section, which is located within the Land Protection Division (the Division) of the Department of Environmental Quality (the Department).

The previous IMPEP review (ML103340085) was conducted the week of September 13-17, 2010. At the conclusion of the review, the team found Oklahoma's performance to be satisfactory, but needs improvement, for the indicator, Technical Quality of Licensing Actions, and satisfactory for the remaining performance indicators reviewed. The review team made two new recommendations regarding program performance by the State and kept two open recommendations from the previous review. The team recommended and the MRB agreed that the Oklahoma Program is adequate to protect public health and safety and compatible with NRC's program and that the next full IMPEP review should take place in four years.

The current status of the recommendations identified during the 2010 Oklahoma final IMPEP report is summarized below.

- "The review team recommends that the Section take appropriate measures to conduct their inspection program in a sustainable manner by continuing to implement their corrective action program. (Section 3.2)"

Current Status: The Section continues to implement the corrective action program they initiated after self identifying issues with their database, data entry, and work assignments early in the previous review period.

During the 2010 IMPEP review, the team calculated 17.9 percent of Priority 1, 2 and 3 inspections were conducted overdue. This was primarily caused because of an out-of-date database program in addition to the following:

- Initial inspection data that needed to be created by the license reviewer upon issuance of a new license was not always performed by the license reviewer.
- New inspection data that needed to be created by the inspectors following the completion of their assigned inspections was not always completed by the inspector.

- Inspection assignments had been the responsibility of a staff member prior to retirement in March, 2007. An incorrect assumption was made by management that inspection assignments for the remainder of 2007 had been completed by the individual prior to the retirement. This incorrect assumption caused a delay in the assignment of inspection responsibilities to inspection staff.

The Section stated that accurate and timely data entry created some short term problems for them. The individual handling most database issues left the Section this year. After some short-term disruptions, a new person to handle database issues was trained and the State reports, is now working smoothly.

- “The review team recommends that the Section retrain its staff to gain increased familiarity with the regulations under 10 CFR Part 35 and the appropriate NRC guidance documents for medical use authorizations. (Section 3.4)”

During the 2010 IMPEP review, the team noted several areas within the licensing program where specific issues were noted. These included:

- Physicians were authorized for 10 CFR 35.300 uses when the documentation supported only 10 CFR 35.100 and 200 uses or the authorization should have been limited to the use of sodium iodide I-131, only,
- Reviewers accepted specialty board certifications that were dated previous to the specialty board certifications recognized by the Commission,
- Physicians were approved without the required specialty board attestations provided in the supporting documentation,
- A Delegation of Authority was not included with the supporting documentation for a new Radiation Safety Officer,
- A medical physicist and authorized user were authorized for 10 CFR 35.600 materials, but did not appear to meet the authorized requirements for high-dose rate brachytherapy.

Following the review, the Section Manager coordinated with Region IV to provide additional licensing training for his staff. A senior license reviewer from the region traveled to Oklahoma and spent a week working with their staff to help enhance their licensing capabilities. The Section reported that this additional training helped significantly. It helped to fill the knowledge gaps they had been experiencing. Based on that training, the Section made changes to how they handle licensing actions and believes they are now issuing improved licenses. While infrequent errors are made, they are being caught before they leave the Section. Internal audits of licensing actions have been performed and no significant errors in mailed documents were detected.

- “The review team recommends that the State take measures to ensure proper documentation and appropriate response, review, enforcement, and follow up of all radioactive materials incidents. (From the 2006 IMPEP report) (Section 3.5)”

During the 2006 IMPEP review, the team noted that while the Section responded appropriately to incidents, they sometimes failed to appropriately document the actions taken in response to the incident. The Section had a policy requiring them to maintain incident documentation in one file; however, the Section didn't always follow that policy. The team noted that many incident files did not have documentation, or that investigation information was often maintained in draft form in inspector's personal files.

During the 2010 IMPEP review, the review team noted that while little had been done to improve documentation of investigations following the 2006 review, the team now found that the Section did not always fully investigate incidents as they had previously done.

The Section reported that in response to these issues, they assigned one individual to manage the Incident and Allegation Program. A detailed flow chart was developed, training was provided, and staff is expected to follow the process. Documentation is now maintained in one file and a marker is placed in the license file to notify inspectors that an event has occurred in the facility so an additional follow up to the initial response can be performed. Information on investigations is maintained in the Section's database and it is audited for accuracy, completeness, that appropriate actions have been taken to close out the incident programmatically, and that NMED has been properly updated. The Section reported they now believe they have a solid incident investigation program.

- "The review team recommends that the State take measures to ensure proper documentation and appropriate tracking and closure of all allegations involving radioactive material. (From the 2006 IMPEP report) (Section 3.5)"

During the 2006 IMPEP review, the team noted that while the Section responded appropriately to allegations, the team noted that initial contact information and allegation investigation information was maintained in several locations. The team also found that in all but one case, that the Section properly closed each allegation. In this case, the case was not closed and the alleged was not notified of the results of the investigation.

During the 2010 IMPEP review, the review team noted that again in one allegation investigation, the Section did not notify the alleged of the results of the investigation.

The Section reported that while they believe in all cases they did notify alleged of the results of allegation investigations, they did not have documentation in the files to verify they did provide alleged with results.

As noted in the previous recommendation, to improve their documentation the Section assigned one individual to manage the Incident and Allegation Program. A detailed flow chart was developed, training was provided, and staff is expected to follow the process. Documentation is now maintained in one file. General information on allegation investigations is maintained in the Section's database and it is audited for accuracy, completeness, that appropriate actions have been taken to close out the allegation, and that alleged have been notified of the results. The Section reported they now believe they have a solid allegation investigation program.

Other topics covered at the meeting included.

Program Strengths: The Radioactive Materials Section is a busy program with a highly motivated staff that is responsible for the licensing and inspection of approximately 250 specific materials licensees. Management support to the Section is outstanding at all levels, and access to senior management is unencumbered. The Section noted that the dedication of their staff to making the program successful is a huge strength for them. The Section noted they have good support from their Radiation Management Advisory Council and have an effective enforcement program. They also noted they had a recent fee increase which should place the Section in a favorable position financially for the near future. Their fee increases are tied to the Consumer Price Index and fixed so they are never reduced.

Program Weaknesses: While the Section has experienced significant turn over recently, they have experienced success in filling positions in the materials program. Salaries are low which makes it difficult to keep employees once they are trained. The Section Manager and two senior staff members have over 10 years of experience each, but beyond that the rest of the staff is relatively new. The Section Manager will be eligible to retire in two years and if he leaves, there will be a management gap to overcome. The Section Manager has no specific plans to retire at this time. Following the 2010 IMPEP review, the Section lost one FTE permanently which is now beginning to stress the Section. The Section also reported that they are challenged by how to enter into Web Based Licensing. They are concerned that there may be IT issues associated with their becoming fully engaged in WBL.

#### Feedback on NRC's Program:

The Section discussed several issues including the following:

- The Section stated that a pathway for the disposal of depleted uranium is needed.
- The Section expressed their appreciation for the support they receive in the form of training from NRC. They further stated that they are having difficulty getting into certain training courses such as the Brachytherapy course.
- The Section stated that for new courses like the Decommissioning course, that in the first year or two of its initial implementation, that they should offer additional classes to accommodate the initial increased interest and demand. The Section Manager praised the offering of the new Decommissioning course, saying that it filled an important need for states.
- The Section believes they are challenged by the implementation of Web Based Licensing. They would like to incorporate it into their program and would like a discussion between state IT staff and the WBL IT staff.

#### Staffing and training:

The Radiation Management Section is a busy program which is divided into different program areas. Most of the staff is relatively new to the Section with one still working on full qualification. Because of low salaries, the Section has had difficulty in hiring Health

Physicists and has resorted to developing a “grow your own” type program. They hire individuals with science backgrounds and train them in health physics. Since the 2010 IMPEP review, the Section has lost three technical and one clerical staff member. A second clerical staff member left the Section approximately one week after the meeting. They report that they are able to fill vacancies promptly.

The status of Agreement State staff members who fail NRC training courses was discussed. The Section Manager indicated it is their policy to either resend the individual to the class or provide other forms of training whenever this might occur. Since the last IMPEP review, one staff member failed the Fundamental Health Physics I and II course. In this instance, the individual will restudy course materials and retake the test. If unsuccessful, they plan to resend the individual back through the course.

#### Program reorganizations:

The Section has not been subject to reorganization since the 2010 IMPEP review.

#### Changes in Program budget/funding:

The Section reported their fee increases are tied to the Consumer Price Index (CPI). When the CPI goes up, the Section receives an equivalent percentage fee increase. If the CPI falls, fees remain the same. This has helped to stabilize funding for the Section.

#### Materials Inspection Program:

The Section reported that they currently have no overdue inspections. During the 2010 review it was noted that 13 of 42 initial inspections had been performed overdue. The Section Manager reported that this is no longer a problem and initial inspections are now typically performed within 12 months of issuance. They continue to inspect reciprocity licensees and have not had difficulty performing inspections on at least 20 percent of candidate reciprocity licensees. The Section performs Increased Controls (IC) inspections concurrent with health and safety inspections. The Section Manager conducts about two-thirds of the supervisory accompaniments and one of the senior inspectors performs the remaining one-third of the supervisory accompaniments. The Section reports that accompaniments are up to date.

The Section reported they had completed 172 Priority 1, 2 and 3 inspections since the 2010 review, with only five being performed late. That results in 2.9 percent of inspections being performed overdue.

The Section also reported that they had completed and mailed a total of 156 letters transmitting inspections findings to licensees. Of those a total of 66 were sent out more than 30 days from completion of the inspection. That results in 42.3 percent of all inspection findings being sent to licensees greater than 30 days. The Section Manager believes this continues to be a weakness for the Section, in part, because inspectors are not allowed to leave 591 forms in the field following an inspection. The Section is creating a Standard Operating Procedure (SOP) to allow inspectors to issue 591s in the field which will help this situation appreciably.

Licensing Program:

The Section reported that the licensing program is very active. As noted by the 2010 review team, the Section had experienced problems with consistency with adoption of the most recent changes to medical rules in their licensing program. Following additional training provided by the regional NRC office, the Section Manager reported that consistency has improved and many of the knowledge gaps they were experiencing have been corrected.

The 2010 review team also noted that the Section had initiated the process to address maximum possession limits on radioactive materials licenses as requested by RCPD letter 10-007, dated June 21, 2010. The Section reported that they have completed this action. The Section is also following the current pre-licensing guidance appropriately.

Regulations and Legislative changes:

The Section reported that one legislative package was finalized following the 2010 IMPEP review that affected their program.

- Legislation exempting all law enforcement agencies from complying with regulations involving sources of radiation,” which would unintentionally include radioactive materials. In the most recent legislative session, this language was amended to limit the exemption to radiation machines so that radioactive materials would still be under the Section’s jurisdiction.

The Section also identified one legislative package that is being proposed for the next legislative session that might affect their program.

- Legislation requiring the Section to exempt certain IC-related information on radioactive materials licenses from the state’s Open Records Act.

Current NRC policy requires that Agreement States adopt certain equivalent regulations or legally-binding requirements no later than 3 years after they become effective. The State incorporates regulations by reference to the NRC regulations.

The following amendments are currently overdue and have not been submitted for review at the time of the meeting::

- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20” (72 FR 68043), that was due for Agreement State implementation by February 15, 2011.
- “Medical Use of Byproduct Material – Authorized User Clarification Part 35” (74 FR 33901), that was due for Agreement State implementation by September 29, 2012.

The following regulation was submitted for review and had comments that need to be addressed by the Section as referenced in an October 31, 2005 letter to the Oklahoma

Department of Environmental Quality. (ML053050275):

- Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 (63 FR 50127) that was due for Agreement State implementation on October 20, 2001.

The following regulations were submitted for review and had comments that need to be addressed by the Section as referenced in an October 29, 2010 letter to the Oklahoma Department of Environmental Quality. (ML102810155)

- "Financial Assurance for Materials Licensees," 10 CFR Parts 30, 40 and 70 amendments (68 FR 57327), that was due for Agreement State implementation on December 3, 2006.
- "Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments," 10 CFR Part 71 amendment (69 FR 3697), that was due for Agreement State implementation on October 1, 2007.
- "Medical Use of Byproduct Materials - Recognition of Specialty Boards - Part 35," 10 CFR Part 35 amendment (70 FR 16336 and 71 FR 1926), that was due for Agreement State implementation on April 29, 2008.
- "Minor Amendments," 10 CFR Parts 20, 30, 32, 35, 40 and 70 amendments (71 FR 15005), that was due for Agreement State implementation on March 27, 2009.
- "Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements," 10 CFR Parts 30, 31, 32 and 150 amendments (72 FR 58473), that was due for Agreement State implementation on December 17, 2010.
- "Requirements for Expanded Definition of Byproduct Material," 10 CFR 20, 30, 31, 32, 33, 35, 61 and 150 amendments (72 FR 55864), that was due for Agreement State implementation on November 30, 2010.

#### Event reporting, including follow-up and closure information in NMED.

Since the 2010 IMPEP review, the Section reported eight events to NMED, with only one remaining open. The Section will close the open event when they are able to obtain the necessary information.

#### Response to incidents and allegations.

The Section continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their affect on public health and safety. Incidents are evaluated for safety significance and staff is dispatched to perform onsite investigations whenever possible.

The 2010 IMPEP review team identified issues in both the Section's incident and allegation programs involving in large part, the proper maintenance of documentation. As

noted earlier, the Section assigned one individual to manage the Incident and Allegation program. A detailed flow chart was developed, training was provided, and staff now follows the process. Documentation is maintained in one file and markers are placed in the license file to notify inspectors that an event has occurred in the facility so an additional follow up to the initial response can be performed. Information on investigations is maintained in the Section's database and it is audited for accuracy, completeness, that appropriate actions have been taken to close out the incident programmatically, and that NMED has been properly updated.

#### Status of allegations and concerns referred by the NRC for action.

The Section continues to process allegations as they are received. They have not received any allegation referrals from NRC since the 2010 IMPEP review, but have received allegations directly. They investigated and closed them using their established process. The Section continues to be sensitive to issues of identity protection regarding alleged.

#### Significant events and generic implications.

The Section reported they have not experienced any significant events with potential generic implications since the 2010 IMPEP review.

#### Current State Initiatives.

The Section reported that current initiatives they are involved with include:

- Dealing with the recent boom in industrial radiography activities.
- Developing a Standard Operating Procedure for issuing 591 Forms in the field.

#### Emerging Technologies.

The Section reported the following as an emerging technology:

- Oklahoma State University's Multispectral Laboratory's field testing of testing equipment including radiation survey meters.

#### Large, complicated, or unusual authorizations for use of radioactive materials.

None Identified.

#### State's mechanisms to evaluate performance.

The Section reported the following as examples of how they evaluate program performance:

- Inspector accompaniments are performed to ensure they are performing at the expected level.



- Experienced individual staff members have been selected to audit selected issues such as reviewing recently-issued medical licenses to confirm compliance with the medical rules changes that were identified as an issue in the last IMPEP.

Current NRC initiatives:

Various NRC initiatives were discussed including senior NRC management changes, web based licensing program, and General License program updates.

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held on schedule in September 2014.

**Agenda for Management Review Board Meeting  
December 10, 2012 2:00 p.m. – 5:00 p.m. ET, O-17B4**

1. Announcement of Public Meeting to all attendees and request for identification of any members of the public participating in this meeting.
2. MRB Chair convenes meeting. Introduction of MRB members, NRC staff members, State representatives, and other participants.
3. Discussion of Periodic Meetings:
  - a. Arkansas  
(October 30, 2012) – ML1232A005—Erickson / Campbell
  - b. Kansas  
(June 27, 2012) – ML12209A093 – Browder / Howell / Dimmick / Olmstead
  - c. Oklahoma  
(October 24, 2012) – ML12324A110 – Erickson / Poy
4. Adjournment

Invitees:	Michael Weber, DEDMRT	Brian McDermott, FSME
	Bradley Jones, OGC	Pamela Henderson, FSME
	Mark Satorius, FSME	Duncan White, FSME
	Bill Dean, RI	Lisa Dimmick, FSME
	Jennifer Opila, CO	Michelle Beardsley, FSME
	Binesh Tharakan, RIV	Karen Meyer, FSME
	Randy Erickson, RIV	Jack Foster, OEDO
	Janine Katanic, FSME	Bernard Bevill, AR
	Vivian Campbell, RIV	Thomas Conley, KS
	Rachel Browder, RIV	Mike Broderick, OK
	Anton Vogel, RIV	